

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.** See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

**FILED BY CLERK**  
**AUG 20 2009**  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2009-0121-PR
	)	DEPARTMENT B
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
BRETT FISHER,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR 20070052

Honorable Robert Duber II, Judge

REVIEW DENIED

Daisy Flores, Gila County Attorney  
By Pascal Brown

Globe  
Attorneys for Respondent

Brett Fisher

Buckeye  
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 A jury found petitioner Brett Fisher guilty of trafficking in stolen property in the second degree, a class three felony, and theft of property valued at more than \$250 but

less than \$1,000, a class six felony. The trial court suspended the imposition of sentence, placed Fisher on probation for four years, ordered him to serve 365 days in jail as a condition of his probation, and ordered him to pay \$579 in restitution. We affirmed Fisher's convictions and the probationary term imposed on appeal. *State v. Fisher*, No. 2 CA-CR 2007-0276 (memorandum decision filed May 29, 2008). In September 2007, the state filed a petition to revoke Fisher's probation, alleging he had failed to "self surrender" to the jail as ordered by the court. Fisher admitted the violation in December 2007, and in January 2008, the court revoked his probation and sentenced him to concurrent, mitigated terms of imprisonment, the longer of which was 2.5 years. This petition for review follows the court's order denying his request for post-conviction relief.

¶2 Although the trial court appointed counsel to represent Fisher in the post-conviction proceeding related to the revocation of his probation, in March 2008 Fisher filed a pro se notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P.<sup>1</sup> The court then granted counsel an extension to file a petition for post-conviction relief by January 2009. It appears that no document designated as a petition for post-conviction relief was ever filed. However, in November 2008, the court denied Fisher's pro se "Motion For Evidentiary Hearing - Rule 32 Petition," filed earlier that month while Fisher was still represented by counsel. In December 2008, the court granted counsel's motion to withdraw, which counsel

---

<sup>1</sup>In September 2008, counsel asked the trial court to vacate the stay of the post-conviction proceeding that Fisher had requested after filing his first notice of post-conviction relief. The court had stayed that post-conviction proceeding pending the outcome of his appeal.

filed at Fisher’s request. Then, in January 2009, the court denied Fisher’s “Motion for Post-Conviction Relief,” finding “there were no grounds upon which post-conviction relief should be granted.” The court was presumably referring to Fisher’s Motion For Evidentiary Hearing - Rule 32 Petition.

¶3 Because it appears that the trial court treated Fisher’s Motion For Evidentiary Hearing - Rule 32 Petition as a properly filed petition for post-conviction relief and that the court denied relief on the merits, Fisher’s March 31, 2009 petition for review of the court’s order denying relief, filed on April 13, 2009, is untimely. *See* Ariz. R. Crim. P. 32.9(c) (petition for review must be filed within thirty days after trial court’s final decision on petition for post-conviction relief). We therefore deny review without prejudice to Fisher to seek leave from the trial court to file a delayed petition for review. *See id.*

¶4 The petition for review is denied.

---

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

---

J. WILLIAM BRAMMER, JR., Judge

---

GARYE L. VÁSQUEZ, Judge